Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4247 OF 2025
WITH
INTERIM APPLICATION (ST) NO. 25258 OF 2025

Rover Finance Limited through its
authorized representative Akash Ramchand
Pachload ...Petitioner

Versus

The State of Maharashtra and anr. ...Respondents

Ms. A. S. Pai, a/w Mujtaba Shaikh, i/b Rajendra Rathod, for the Petitioner.
Mr. Santosh Bhide, i/b Bhide & Asso., for Respondent No.3.
Ms. Prerna Panpate, i/b Ganesh Sovani, for the Applicant in IA(St)/25258/2025.
Smt. R. S. Tendulkar, APP for the State – Respondent No.1.

CORAM: N. J. JAMADAR, J.
Reserved On: 22nd JANUARY, 2026
Pronounced On: 23rd JANUARY, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 ("the Code"), calls in question, the legality, propriety and correctness of an order passed by the learned JMFC, Esplanade Mumbai, on 20th March, 2025, whereby an application preferred by the petitioner for return of gold/gold ornaments came to be rejected and a judgment and order dated 10th July, 2025, whereby the learned Additional Sessions Judge, Mumbai, declined to exercise revisional jurisdiction opining that the order passed by the learned Magistrate being an interlocutory order, a revision thereagainst was not maintainable.

3. The petitioner is a non-banking financial company. The petitioner had taken over the business of Trillion Loan Fintech Pvt. Ltd. ("the Trillion"). The petitioner claimed Trillion was engaged in the business of gold loan. Trillion had five branches. After take over, the petitioner caused audit of the gold loan transactions at the branches of Trillion. At the Dombivali Branch, 260 packets, which were expected to contain 29 kg. gold/gold ornaments, were found missing from the safe. Inquiries revealed that Shivaji Patil (A2), the then Branch Manager of Dombivali Branch, and Shivkumar Iyer (A1), the then area head of Trillion, had fraudulently removed the packets containing the gold from the safe and misappropriated the same. Shivkumar Iyer (A1) had conspired with Sachin Salunkhe (A3), the proprietor of R. K. Bullions, and got the said gold/gold ornaments pledged with ICICI Bank in the name of the relatives, employees and friends of Sachin Salunkhe (A3) and raised gold loan thereon. The said amount was invested by Shivkumar Iyer (A1) in the stock market and thereby Shivkumar (A1) suffered loss. Complicity of the officials of ICICI Bank (R2) was also revealed. During the course of investigation, pursuant to the disclosure made by Shivkumar Iyer (A1), 16.12 kg. gold/gold ornaments were recovered from the safe of ICICI Bank (R2).

4. Post completion of investigation, charge-sheet came to be lodged for the offences punishable under Sections 120B, 420, 408, 409, 506(2) read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

5. The petitioner filed an application for return of the gold/gold ornaments during the pendency of the trial. None of the accused resisted the application. The prosecution and ICICI Bank (R2) resisted the prayer for return of the seized property. The prosecution contended that, the petitioner as well as ICICI Bank (R2) were laying rival claims over the seized property and, thus, it would be appropriate to pass an order regarding the disposal of the property at the stage of final judgment only. ICICI Bank (R2) also opposed the prayer by contending that the property was seized from the custody of ICICI Bank (R2) and, at an interim stage, the rival claims over the seized property could not be determined.

6. By an order dated 20th March, 2025, the learned Magistrate, after noting the facts and circumstances in which the gold/gold ornaments were seized, rejected the application on the premise that without determining the ownership of the seized property it would not be appropriate to deliver the custody thereof to the petitioner.

7. Being aggrieved, the petitioner preferred a revision before the learned Sessions Judge. By the impugned judgment and order dated 10th July, 2025, the learned Additional Sessions Judge dismissed the revision application on the ground of maintainability as the order passed by the learned Magistrate was interlocutory in nature, though in the view of the learned Additional Sessions Judge, the order passed by the learned Magistrate appeared to be *prima facie* incorrect.

8. Being aggrieved, the petitioner has invoked the writ jurisdiction.

9. I have heard Ms. Pai, the learned Counsel for the petitioner, Smt. Tendulkar, the learned APP for the State – Respondent No.1, Mr. Bhide, the learned Counsel for respondent No.2 – ICICI Bank and Ms. Panpate, the learned Counsel for the applicant in IA(ST)/25258/2025.

10. Ms. Pai, the learned Counsel for the petitioner, submitted that the learned Magistrate committed a manifest error in observing that there were no documents to substantiate the claim of the petitioner that criminal breach of trust was committed in respect of the seized gold/gold ornaments which were pledged by the borrowers of Trillion. Attention of the Court was invited to the documents (Exhibit-E pages 42 to 1692) which evidence the transactions between Trillion and numerous borrowers of Trillion. Laying emphasis on the identity of the borrowers, the description of the gold/gold ornaments pledged, the weight thereof and the amount of loan advanced thereagainst, Ms. Pai would submit that there is voluminous material to substantiate the claim of the petitioner.

11. With regard to the resistance sought to be put-forth by ICICI Bank (R2), Ms. Pai would submit that, the investigation has revealed that the offences were committed in connivance with the officers of ICICI Bank (R2), who have also been implicated as co-accused. In these circumstances, when the learned Additional Sessions Judge found that the order passed by the learned Magistrate did not appear to be correct, the learned Additional Sessions Judge ought not to have declined to grant the relief to the petitioner. At any rate, Ms. Pai would urge, the petitioner is ready to furnish a bank guarantee to secure the amount of Rs.6.5 Crore which was allegedly advanced by ICICI Bank (R2) against the stolen property.

12. It would be contextually relevant to note that Mr. Akash Pachload, who lodged the FIR on behalf of the petitioner and has been authorized to file this petition, has filed an affidavit indicating that the petitioner is ready and willing to give bank guarantee of Rs.6.5 Crore to secure the interest of ICICI Bank (R2) subject to the final adjudication of the rival claims at the conclusion of the trial.

13. Smt. Tendulkar, the learned APP and Mr. Bhide, the learned Counsel for ICICI Bank (R2) countered the submission on behalf of the petitioner.

14. It emerges from the report under Section 173 of the Code of Criminal Procedure, 1973 and material on record that, the seized property consisting of the gold/gold ornaments was pledged by the borrowers of Trillion. The petitioner had lodged a report with the allegations that audit revealed that 260 packets consisting 29 kg. of gold were missing from the safe of the Dombivali Branch of Trillion. The then Branch Manager and Area Head, who were the joint custodians, had committed criminal breach of trust. The said gold/gold ornaments were allegedly subsequently pledged with ICICI Bank (R2) in the name of the relatives, employees and friends of Sachin Salunkhe (A3) to raise loan.

15. In the light of the material on record, the learned Magistrate has, in terms, recorded a *prima facie* view that Trillion as well as ICICI Bank (R2) had advanced loan on the security of the same gold/gold ornaments. Undoubtedly, the property came to be seized from the custody of ICICI Bank (R2). Ordinarily, the property ought to be returned to the party from whose custody it came to be recovered. However, the material on record in the case at hand does, *prima facie,* indicate that the seized property formed part of the property in respect of which criminal breach of trust was allegedly committed by the employees of the Trillion/petitioner. The copies of the gold loan application (Exhibit-E pages 42 to 1692), contain adequate particulars of the persons, who had pledged the gold/gold ornaments with the Trillion, and the description of the property which was pledged under those applications. In addition, the fact that the employees of ICICI Bank (R2) were also allegedly complicit in the commission of alleged offences lends *prima facie* credence to the claim of the petitioner for the return of the property.

16. A profitable reference can be made to the approach to be adopted by the Magistrate, as delineated by the Supreme Court in the case of **Sunderbhai Ambalal Desai V/s. State of Gujarat**[1]. Paragraphs 11 to 13 are relevant and read as under :

> "Valuable articles and currency notes
>
> **11.** With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.
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> **12.** For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after;
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> > (1) preparing detailed proper panchnama of such articles;
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> > (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

1 (2002) 10 SCC 283

> (3) after taking proper security.
>
> **13.** For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 of CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 CrPC to impose any other appropriate condition."

17. It was submitted on behalf of ICICI (R2) that it had advanced a loan of Rs.6.5 Crore against the security of the seized property. As noted above, none of the accused has raised any objection to the return of the property. In these circumstances, the willingness of the petitioner to protect the interest of ICICI Bank (R2) by furnishing a bank guarantee in the sum of Rs.6.5 Crore, in the view of this Court, adequately secures the interest of ICICI Bank (R2). Needless to clarify that the proprietary title over or interest in the seized property would be adjudicated by the learned Magistrate at the conclusion of the trial. Thus, the learned Magistrate was not justified in rejecting the application for return of the property.

18. The learned Additional Sessions Judge, as noted above, though found that the order passed by the learned Magistrate was not *prima facie* correct, yet, rejected the revision application on the ground of its maintainability. In these circumstances, this Court is impelled to allow the petition.

19. Hence, the following order:

: O R D E R :

(I) The petition stands allowed.

(II) The order passed by the learned Magistrate as well as the impugned order passed by the learned Additional Sessions Judge, stand quashed and set aside.

(III) The seized property be returned to Trillion Loan Fintech Pvt. Ltd. subject to the following conditions:

(a) The petitioner shall furnish a bank guarantee of a nationalized bank in the sum of Rs.6.5 Crore to secure the interest of ICICI Bank (R2) in favour of the learned Magistrate.

(b) The said bank guarantee shall be kept alive by the petitioner till the conclusion of the trial.

(c) In the light of the guidelines in the case of **Sunderbhai Desai (Supra)**, the learned Magistrate shall take appropriate measures, and impose appropriate terms and conditions subject to which the seized property would be returned to the petitioner.

(d) Such an order be passed by the learned Magistrate within a period of one week from the date of the communication of this order.

The petition stands disposed.

In view of disposal of the petition, IA(St)/25258/2025 also stands disposed.

[N. J. JAMADAR, J.]